THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.5232 of 2006

Date of Decision: 9 - 10 - 2006

Dharampal Singh **.....Petitioner**

v.

Balkar Singh and others **.....Respondents**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.H.S.Sullar, Advocate
for the petitioner.

Mr.J.S.Cooner, Advocate
for the caveator-respondents.

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P.S.PATWALIA, J. (Oral)

The present revision petition has been filed challenging order dated 13.9.2006 vide which an application filed by the plaintiff, petitioner in this revision petition, under Order VI Rule 17 of the Code of Civil Procedure for amendment of the plaint was dismissed.

I may state here that defendant No.1 in the suit has filed written statement of admission and defendants 3 and 4, the only other defendants have been proceeded against ex parte. Hence the caveator – defendant No.2 is the only contesting respondent.

The trial Court has rejected the application for amendment primarily on the ground that the suit was filed on 25.7.1990 and the application for amendment had been filed after a period of 16 years. Still further the trial Court

found that it was not a case where the plaintiff would not have known of the proposed amendment if he had exercised due diligence.

The plaintiff had filed the suit for possession by way of specific performance of an agreement to sell/contract dated 22.4.1989 entered into with defendant No.1 whereby half the land was to be sold to the plaintiff and other half to defendant No.2. The plaintiff had averred in the suit that when they went for execution of the sale deed, defendant No.1 told him that he had executed the sale deed for the entire land in favour of defendant No.2. It is on these pleadings that the suit had been filed. Even though the suit was filed in July, 1990, written statement was filed by defendant No.2 only on 17.8.2006 and service on defendant No.1 was effected only on 7.8.2006. It was only when written statement was filed by defendant No.2 that the plaintiff came to know that half of the land which was to come in share of the plaintiff had been sold to the nephews of defendant No.2. Hence the application was filed seeking amendment in the plaint and seeking to implead the nephews of defendant No.2 as defendants in the suit. It is this application which has been rejected.

Learned counsel for the petitioner contends that since the plaintiff had come to know about the fact that the sale deed was executed in favour of nephews of defendant No.2 only in August, 2006, it is immediately thereafter the application for amendment was moved for adding the nephews as defendants to the suit. It is contended that without their presence, the suit cannot proceed and is liable to be rejected on the ground of non joinder of necessary parties. He therefore prays that the amendment may be allowed.

On the other hand, learned counsel for defendant No.2 contends that the amendment should not be allowed as firstly the application was filed after a long delay of 16 years and in the absence of nephews as parties to the suit a substantial right has accrued in his favour as the suit is liable to be dismissed for non joinder of necessary parties.

I have heard Mr.H.S.Sullar, learned counsel appearing for the petitioner and Mr.J.S.Cooner, learned counsel appearing for the caveator-respondent and have perused the paperbook.

It is the admitted position before me that as yet only issues have been framed in the suit and evidence is yet to be led by the parties.

After hearing learned counsel for the parties, I am of the opinion that the application for amendment filed by the plaintiff deserves to be allowed. The pleadings made by the plaintiff in the civil suit which are relevant for the present controversy are as hereunder:-

> "That on the date fixed mentioned above 15.6.89 for execution of the sale deed by defendant no.1 in favour of plaintiff and defendant no.2. The plaintiff asked the defendant no.1 for executing the sale deed regarding the land in suit in favour of the plaintiff and defendant no.2 and the plaintiff asked defendant no.1 to specifically perform the agreement on his part and receive the remaining sale consideration from him and tendered the amount. But defendant no.1 told the plaintiff that he has executed the sale deed regarding the land in suit in favour of defendant no.2 on 14-6-1989....."

A reading of these pleadings would show that the plaintiff had filed the suit under the assumption that the entire land had been sold by defendant No.1 in favour of defendant No.2. It is only when written statement was filed by defendant No.2 that the petitioner came to know that the land had been sold by defendant No.1 to the nephews of defendant No.2. Hence application was made for impleading them as parties. Therefore, I find that the petitioner cannot be penalised if the suit has remained pending for one reason or the other from 1990 upto 2006. It was at that stage that the written statement was filed. Even otherwise, I am of the opinion that for a proper and fair adjudication of the controversy the presence of nephews of

defendant No.2 is necessary before the trial Court. Still further I am also of the opinion that it is the petitioner's case that the land had been sold to defendant No.2, he could not despite due diligence have known as to in whose favour the sale deed was executed as the sale deed would have been either with the purchaser or the seller.

For the aforementioned reasons the present revision petition is allowed. Order dated 13.9.2006 passed by the trial Court is set aside. The application filed by the petitioner seeking amendment of the plaint stands allowed.

(P.S.PATWALIA)
JUDGE

October 9, 2006.

RC